

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
March 26, 2003 4.b.

File Number
SP02-029

Application Type
Appeal of Special Use Permit Approval

Council District SNI
3 Five Wounds/Brookwood

Planning Area
Central

Assessor's Parcel Number(s)
472-04-014

PROJECT DESCRIPTION

Completed by: John Davidson

Location: Southeast corner of S. Twenty-fourth Street and Peach Court (300 S. Twenty-fourth Street)

Gross Acreage: 0.16

Net Acreage: n/a

Net Density: n/a

Existing Zoning: LI Light Industrial

Existing Use: Locksmith's shop

Proposed Zoning: no change

Proposed Use: Outdoor Vending Facility (Catering Truck)

GENERAL PLAN

Completed by: JED

Land Use/Transportation Diagram Designation
Light Industrial w/ Mixed Industrial overlay

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JED

North: Industrial

LI Light Industrial

East: Residential

LI Light Industrial

South: Residential

LI Light Industrial

West: Industrial

LI Light Industrial

ENVIRONMENTAL STATUS

Completed by: JED

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: JED

Annexation Title: McLaughlin No. 16

Date: 7/27/1981

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: JED

Department of Public Works

None received

Other Departments and Agencies

None received

GENERAL CORRESPONDENCE

See appeal application and petition regarding original Special Use permit approval.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The appellant, Daniel Vidrio, is appealing the Planning Director's decision to approve a Special Use Permit (File SP02-029) to allow an outdoor vending facility on private property at the southeast corner of South Twenty-fourth Street and Peach Court. The outdoor vending facility is a catering truck. Outdoor Vending Facilities are normally approved with an Administrative Permit, per Section 20.80.800 of the Zoning Ordinance. If the proposed outdoor vending facility does not meet the criteria for an Administrative Permit approval, then the applicant may seek a Special Use Permit approval per Section 20.100.1230 (B) of the Zoning Ordinance.

The subject parcel was originally a gas station, and is located in a mixed industrial and residential corridor along S. Twenty-fourth Street. Surrounding uses are residential to the south and east, and industrial to the north and west. Union Pacific Railroad tracks cut across the intersection of S. Twenty-fourth Street and Peach Court.

In the Special Use permit approval (copy attached), the Director of Planning made findings justifying the departure from the Administrative Permit standards from the required separation from neighboring residential uses, and from standards for on-site setbacks. In essence, it is Planning staff's opinion that this

catering truck use is also time-conditioned for a three-year lifetime, and is intended to be a temporary use on the site, as the site is anticipated to either redevelop to residential or commercial uses.

This project was approved with input from Code Enforcement Division and the Strong Neighborhoods Initiative (SNI) staff of the Department of Planning, Building and Code Enforcement. The Code Enforcement Division has provided input regarding the appropriate conditions for maintenance of the property based on previous complaints. The SNI staff states that as an interim use, an outdoor vending facility can be found to be consistent with the Five Wounds/Brookwood Terrace Strong Neighborhoods Plan. The Strong Neighborhoods comments also requested landscaping, cleanup of the site, and a two-year time condition. These requests have been incorporated into the permit, with the exception of a three-year time limitation to allow the catering truck owner more time to recoup their investment.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301 of CEQA this project is exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.

GENERAL PLAN CONFORMANCE

The proposed use of an outdoor catering facility conforms to the General Plan land use designation of Light Industrial with the Mixed Industrial overlay. The Mixed Industrial overlay allows for commercial uses compatible with the Light Industrial land use designation. In issuing the Special Use Permit is staff concluded that the proposed outdoor vending facility is an appropriate, complementary use to the surrounding properties.

ANALYSIS

The appellant, Mr. Daniel Vidrio, owns the commercial property at the northwesterly corner of S. 24th and E. William Streets, which is south of the project site. His appeal included a petition against the project signed by a number of people (see attached). The reason for the appeal states that *“The neighbors and local businesses are against SP02-029 because of the vandalism, loitering, crime, trash and eye sore this venue will bring to the area. We would like to voice our concerns to the Planning Commission before a final decision is made.”* The appeal does not include any facts, data or documentation to support the stated concerns resulting from the proposed use. In addition, the petition cites the following concerns regarding the Director’s decision on the proposed vending truck:

? Diminished value of surrounding residential uses.

This issue is not a relevant concern in making a land use decision. However, conditions have been included in the Special Use Permit that relates to the site maintenance as a whole, including the provision for no on-site outdoor storage. The overall cleanup of the site is intended to be a positive benefit for surrounding property owners. The catering truck is a relatively minor incidental use and should not significantly affect the site's function or overall character. The approved SUP provides an additional level of regulatory control in that the property owner accepts the permit conditions.

? Increased trash from the catering truck use.

A permit condition is included in the Special Use Permit that specifically states that the area surrounding the vending facility is to be maintained in a clean and orderly fashion. The permit is subject to a variety of enforcement measures, including revocation, for failure to comply with any of the permit provisions.

? Increased loitering and illegal drug sales.

The hours of operation of the catering truck are limited from 9 a.m. to 9 p.m., which will prohibit late-night loitering. The Police Department has not indicated any concern about this issue.

PUBLIC OUTREACH

Hearing notices were mailed to property owners and tenants within 500 feet of the subject property for the September 11, 2002 Director's Hearing and for the March 26, 2003 Planning Commission Hearing in conformance with the Public Outreach Policy. Staff has been available to discuss the project with members of the public.

CONCLUSION

Based on the above analysis, staff concludes that the Special Use Permit, as approved by the Director of Planning, appropriately allows for the use of an outdoor vending facility on the subject site. The conditions that have been incorporated in the permit will insure that both the catering truck, and the site as a whole, are compatible and a better fit into the neighborhood.

RECOMMENDATION

3. This site has a designation of LI Light Industrial with the Mixed Industrial Overlay on the adopted San José 2020 General Plan Land Use/Transportation Diagram and this application is consistent with this designation.
4. This permit includes the conversion of a gas station to another use. The following requirements have been met:
 - a. *Tank removal.* All flammable liquid storage tanks have been removed in compliance with the provisions of Chapter 17.68 of Title 17 of the San José Municipal Code, and the area shall be resurfaced and landscaped in a manner appropriate to the proposed converted use prior to the institution of the catering truck use.
 - b. *Equipment.* All equipment relevant to the gas station use has been removed from the subject site.
 - c. *Soils Testing and Clean-up.* The lot has been tested for soil contamination, and subsequently remediated. The property owner has received clearance from the relevant regulatory agencies, including the Santa Clara Valley Water District.
 - d. *Driveway Closures.* The Director of Planning finds that the existing driveways are adequate for ingress and egress to the site and do not present an undue hazard to pedestrian or vehicular circulation.
 - e. *Landscaping.* Landscaping has been included in the site design of the property.
5. This permit authorizes the operation of a catering truck (outdoor vending facility) on a site that meets the requirements of Zoning Ordinance Section 20.80.850 of the Zoning Ordinance, Minimum Standards for Vending Facilities:
 - a. *Maximum Height, Width, and Length.* The outdoor vending facility is smaller than 10' tall by 10 feet wide by 24 feet long.
 - b. *Distance from Freeway Ramps.* The outdoor vending facility is located more than 100 feet away from the nearest freeway on-ramp.
 - c. *Paved Locations.* The outdoor vending facility is located on a paved site.
 - d. *Mobility of Operations.* The vending facility is operated from a separate, fully mobile vehicle.
~~The vending facility does not connect to on-site water, gas, telephone, or cable services.~~

Vending Facilities. This permit recognizes that the proposed catering truck does not meet the following minimum standards:

- a. *Distance from Intersections.* The location of the proposed catering truck is within the required sight triangle described in the minimum standards from the intersection of S. Twenty-fourth Street and Peach Court. The Department of Public Works has confirmed that the proposed sight lines are adequate.
- b. *Distance from Streets.* The applicant is proposing to locate the catering truck 3 feet away from the public right-of-way, instead of the 15-foot minimum standard. This distance is the maximum separation the can be achieved on the site, given the site's constrained nature, and is adequate to insure that food service activities do not overflow into the street because of the fencing surrounding the site. The operator is also required as a condition of this permit to orient the catering truck service window away from the street to prevent overflow.
- c. *Distance from Driveway Curb Cuts.* The proposed catering truck will be located 15 feet from an existing driveway curb cut, where 20 feet is typically required. As proposed, the catering truck will not impact on site circulation, given the proposed one-way on-site circulation pattern.
- d. *Distance from Residences.* The proposed catering truck site is within 100 feet of the closest residence, where a 150-foot separation is required. The proposed location is within a mixed industrial/residential neighborhood, and the permit includes operational conditions that will insure that the proposed use will have a minimal, acceptable impact on surrounding residences.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Utility Connections.** No utility connections for gas, water, or sewer are allowed for this use. Self-contained auxiliary power units may be used only if they are fully contained within the trailer for which this permit is issued.
2. **Revocation.** This Special Use Permit is subject to revocation for violation of any of its provisions or conditions.
3. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
4. **Conformance to Plans.** The subject use shall conform to and be maintained in accordance with the approved Site Plans and elevations on file in the Department of City Planning.

public or any member thereof, in the course of, or by the manner of, the exercise of rights created by the grant of the Special Use Permit.

8. **Facility Maintenance.** Vending facilities shall be kept in a good state of repair and shall be maintained with surfaces which are clean and not cracked, peeling or faded. The surfaces which do not contain advertising display shall be painted or otherwise covered in muted colors.
9. **Information to be Displayed.** Each vending facility shall display in a manner legible and visible to its clientele in accordance with Section 20.80.890 of the San José Municipal Code:
 - a. The name and phone number of the vendor operating the vending facility;
 - b. The Special Use Permit number and date of issuance issued to the vending facility;
 - c. The number of the City business license issued to the vending facility; and
 - d. A current Health Permit issued by the Health Officer of the County of Santa Clara to the vending facility as provided in Section 20.80.890 of the San José Municipal Code.
10. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. It shall be subject to revocation if it is conducted in such a manner as to cause a nuisance, as defined above.
11. **Compliance with Permit.** Both the permit holder and the property owner are responsible to pursue full compliance with the Special Use Permit and any and all conditions imposed thereon.
12. **Sanitary Facilities.** The operator of this vending facility shall have unrestrained right of access to toilet and handwashing facilities located on the site.
13. **Closing Procedures.** The vending facility shall be removed from the site or placed indoors when the operation or the fixed-base host closes, whichever occurs first.
14. **Hours of Operation.** The hours of operation of an outdoor vending facility shall be limited to the hours of operation of the fixed-base businesses on the fixed-base host site, however no vending facility shall operate during the hours from 9:00 p.m. through 9:00 a.m. During hours in which the fixed-base host site businesses are closed, the vending facility shall be removed from the parcel or lot on which it operates, or shall be stored indoors.

18. **Site Paving.** Prior to institution of the catering truck use, the site must be paved with either asphalt or concrete.
19. **Parking.** Three (3) dedicated parking spaces are required for the customers of the catering truck use.
20. **Outdoor Storage.** No outdoor storage of any type is allowed on site as a part of this permit. Any items currently stored outside must be removed or stored within a fully enclosed structure prior to operation of the outdoor vending facility. Outdoor storage for any use requires a valid Conditional Use Permit, approved by the Planning Commission.
21. **Time Limit.** This Special Use Permit expires and has no further force or effect three years from the date of this Permit.
22. **Renewal.** The permit holder may seek renewal of a time-conditioned Special Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, and application for renewal must be filed more than 90 calendar days but less than 180 days prior to the expiration of the Special Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Special Use Permit is automatically extended until either the issuance or the denial of the application for renewal has become final.

c: Daniel Vidrio, 399 S. Twenty-fourth Street, San Jose, CA 95116